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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,483	07/03/2003	Alan Edward Palmer	F7713(V)	5958
201	7590	10/21/2004	EXAMINER	
UNILEVER PATENT DEPARTMENT 45 RIVER ROAD EDGEWATER, NJ 07020			MCCORMICK EWOLDT, SUSAN BETH	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,483

Applicant(s)

PALMER ET AL.

Examiner

Susan B. McCormick-Ewoldt

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1654

DETAILED ACTION**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maxwell *et al.* (US 6,063,432) and Cook *et al.* (US 4,451,488) in light of Whole Foods website.

A nutritional bar comprising soy and/or rice protein in the form of nuggets containing a transitional metal, is claimed.

Maxwell *et al.* expressly teaches a health bar comprising soy protein with at least 25% wt. in the form of solids (column 2, lines 43-53), using a reducing sugar i.e. listed as mannitol that may be substituted (column 2, lines 65-67). Mannitol is also a polyol and acts as a humectant. It absorbs slower in the body and can be used for diabetic foods (see Whole Foods Market reference). In addition, Maxwell *et al.* includes minerals such as zinc, copper, manganese, chromium and iron (column 3, lines 14-15). As disclosed in the specification, encapsulated minerals refers to edible waxes, proteins (whey protein, vegetable proteins from soy i.e. isolated soy proteins), fibres and carbohydrates (sugar alcohols starches) (see page 12-13) which are inherent to the ingredients that Maxwell *et al.* disclose. Maxwell *et al.* does not specifically teach the soy protein being in nugget form as the whole mixture will be mixed to form a nutritional food bar or the use of glycerol as a humectant.

Cook *et al.* discloses the use of glycerol (which acts a humectant) in a food bar, within the 3% range wt. (see abstract, column 2 lines 40-42 and claims 1 and 6).

One of ordinary skill in the art would have been motivated to combine Maxwell *et al.* with Cook *et al.* because Maxwell *et al.* taught using a soy protein, a reducing sugar, including minerals to make a nutritious and healthy food bar and Cook *et al.* taught that the combination of Maxwell *et al.* with use of glycerol was advantageous. In addition, one of skill in the art would have made the nutrition mixture in nugget form for easier consumption.

It would clearly have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use a composition made up soy protein, minerals and reduced sugars in an effective amount for a nutritional

Art Unit: 1654

health bar to a subject suffering from diabetes or obesity, based upon the beneficial teaching provided by the cited reference, as discussed above.

It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F2d 454,456,105 USPQ 233; 235 (CCPA 1955). see MPEP § 2144.05 part II A.

Variations of components in nutritional compositions were well known in the art. It would have been obvious to one of ordinary skill in the art at the time Applicants' invention was made to determine all operable and optimal concentrations of components because concentration is an art-recognized result-effective variable which would have been routinely determined and optimized in the food industry art. Further, one of ordinary skill in the art would have been motivated to have modified the proportions of active ingredients in the composition in order to enable the content of the preparation to be matched with demands and needs of the food industry. Such variations in amounts of nutritionally active ingredients are considered merely optimization of result effective variables, conventional practice in the art of food industry.

Summary

No claim is allowed.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax number for the group is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme

PATRICIA LEITH
PRIMARY EXAMINER

